IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7973 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M. T. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7973 of 1989
MISS MAHROOK KERRAVALA for TANNA ASSOCIATES for Petitioner No. 1
MR PD BHATE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/03/2004

ORAL JUDGEMENT

1. In this petition the order regarding

compulsory retirement passed against the petitioner has been challenged. The petitioner was appointed as Aval Karkun in the State's service with effect from 4th December, 1954. He was thereafter promoted to Class-II post of Mamlatdar on 5th October, 1964. On 16th February, 1979 he was again promoted in Class-I on the post of Deputy Collector. Subsequently the petitioner was sent on deputation as Special Land Acquisition Officer with Gujarat Housing Board. While he was working on that post, order of compulsory retirement was passed by the respondent on 14th June, 1988 relieving him from the service with effect from 15th June, 1988. The impugned order annexed to this petition at Annexure-A shows that it was passed in accordance with the clause (aa) of sub-rule (i) of rule 161 of the Bombay Civil Service Rules, 1959 (for short 'B.C.S.R.'). The order further shows that it was passed on the ground of interest of public service. In the said order it was also clarified that the departmental proceedings which were going on against the petitioner then would continue even after the retirement.

1.1. It appears from the record of the petition that during the tenure of his service the petitioner faced two departmental inquiries. The first inquiry that was initiated against the petitioner was in the year 1965. The said inquiry pertained to the incident which took place in the year 1965. The charge against the petitioner was that he had changed the applications for subsidy in order to bring them within time. This inquiry was initiated when he was holding a post in Class-III service. During the pendency of these proceedings he was promoted to the post of Deputy Collector in Class-I. The second inquiry was initiated against him just four days prior to the date of the impugned order. It was initiated on the charge that despite the fact that petitioner did not have any authority to hear and decide the cases filed under the Devsthan Inam Abolition Act, he had disposed of many cases under the said Act. The second charge against him was that in Case No. 172 of 1982 he did not permit the tenant to cross-examine the landlord. The defence of the petitioner in the said inquiry was that upon his transfer from Dholka to Ahmedabad, he was given additional charge of one Mr. Bhutiwala, who had retired and as such he was authorized to hear the cases under the Devsthan Inam Abolition Act. So far the second charge is concerned, it was not that he did not permit tenant to cross-examine the landlord, but he himself had sought adjournment by giving an application for joining some other interested persons in the proceedings. It appears that so far the

first inquiry was concerned, he was visited with minor punishment of deduction of Rs.200/= from his basic pension. So far the second inquiry is concerned, it resulted into exonerating petitioner from both the charges.

1.2. Against the impugned order of compulsory retirement, the petitioner had approached this Court by way of Special Civil Application No. 3214 of 1988. This Court had issued notice pending admission to the respondents. However, it appears that in the meanwhile the petitioner had also preferred appeal to the Government of Gujarat against the impugned order which was then not decided. This Court by order dated 10th February, 1989 passed in Special Civil Application No. 3214 of 1988 with Civil Application No. 170 of 1989 had directed the Government to dispose of the appeal filed by the petitioner expeditiously and without further loss of time. The Court had granted period of one month to decide the appeal. Upon the said order being passed, the petitioner had withdrawn Special Civil Application No. 3214 of 1988 together with Civil Application No. 170 of 1989. It appears that in view of the said order, the petitioner had made a representation which was in furtherance of the appeal that was already filed. In view of the direction given by this Court, the Government had decided the appeal and the said decision was communicated to the petitioner by the Deputy Secretary, Revenue Department by letter dated 10th March, 1989 wherein it was stated that the representation/appeal of the petitioner against the order of premature retirement was considered by them as per the direction of the Gujarat High Court and the Government had decided to reject the representation, note of which be taken by the petitioner. In this petition both the orders of compulsory retirement as well as the order rejecting the petitioner's appeal are sought to be challenged by the petitioner.

1.3. In the meanwhile, the petitioner, who was born on 24th October, 1932, had reached the age of superannuation on 24th October, 1990.

1.4. This petition has been filed on various grounds. However, the main ground is that the order of compulsory retirement passed against the petitioner is punitive in nature and respondent has failed to comply with the requisite procedure including the principles of natural justice and, therefore, it is required to be quashed and set aside. There are other averments also made in the petition such as, that the order has been

passed to victimize the petitioner; that both the orders suffer from inherent infirmities because they are not speaking orders and the petitioner has been kept totally in the dark on what basis order of compulsory retirement has been passed against him.

1.5. The petition has been resisted by the respondent by filing affidavit-in-reply wherein it has been contended that the impugned order has been passed mainly on the ground of public interest and/or interest of the public service and it has been passed in accordance with the criteria which has been described in the resolution dated 28th July, 1987 issued by the General Administration Department, Government of Gujarat. [G.A.D.]. It has been further averred that the impugned order has been passed as there were two departmental proceedings pending against the petitioner and also on the scrutiny of his service record, it was found that his integrity was doubtful and, therefore, it was necessary not to continue him any more.

2. Miss Kerravala, learned advocate appearing for the petitioner has submitted that this is a glaring case of victimization, because the petitioner was charge-sheeted in 1978 for the incident that had taken place in the year 1965 and the inquiry in respect of the same was concluded in the year 1991 i.e. almost 3 years after the retirement of the petitioner and second inquiry came to be initiated only 4 days before the date of impugned order. According to her, this was nothing but colourable exercise of power. She has further submitted that there is nothing on record to show on what basis the subjective satisfaction had been formed by the concerned authority to pass the order. Both the impugned order as well as order in appeal are totally silent on this aspect. She has also submitted that though it is termed as simple order of compulsory retirement, in fact it is punitive in nature passed with a view to circumvent the regular procedure. According to her, if inquiry for the purpose of passing the impugned order had been held in time, the petitioner would have been exonerated keeping in view the facts and circumstances of the case. Lastly, she has submitted that the impugned order as well as the order in appeal deserve to be quashed and set aside.

2.1. As against that, Mr. P.D. Bhate, Ld. AGP has placed reliance on the aforesaid Government Resolution and in particular the criteria for passing order of compulsory retirement mentioned therein and has submitted that the order was passed in view of the fact that there were two departmental proceedings pending

against the petitioner and also on the ground of doubtful integrity. He has further submitted that in the affidavit-in-reply it has been specifically averred that a criminal case is pending against the petitioner under the provisions of the Prevention of Corruption Act at Surat. He has, therefore, supported the impugned order.

2.2. Both the learned advocates have placed reliance on various decisions of this Court as well as the Apex Court, which will be referred to in due course of this judgment.

3. Question that arises for consideration is what is the nature of this order? Obviously according to the respondent, it has been passed in accordance with the provisions of rule 161 of the B.C.S.R. and in accordance with the Resolution of the G.A.D. If the affidavit-in-reply filed by the respondent is perused, it shows that the case of the petitioner was considered by the Review Committee and the Review Committee, upon scrutiny, came to the conclusion that the integrity of the petitioner was doubtful and, therefore, irrespective of the assessment of his ability and the efficiency of work he was required to be compulsorily retired. It is also averred in the affidavit that complaints had been received against the petitioner while he was working as Special Land Acquisition Officer in Gujarat Housing Board which were taken into consideration by the Review Committee and in respect of the said complaints investigation was made by the Anti Corruption Bureau, Surat and criminal case has been filed against the petitioner at C.R. No. 14/1998. It may be recalled here that the petitioner was compulsorily retired on 15th June, 1988 and offence came to be registered against the petitioner in the year 1998. The affidavit further shows that the Review Committee had also taken into consideration the fact regarding pendency of two departmental proceedings against the petitioner.

3.1. Whatever that has been submitted in this affidavit has never come on record before. In other words, neither in the impugned order nor in the order passed in appeal of the petitioner, these facts are disclosed. It is interesting to note that the factor which appears to have weighed with the Review Committee is pendency of two departmental proceedings against the petitioner, out of these two one has resulted into imposition of minor punishment and that too after almost 26 years of the date of the incident, by then the petitioner had already retired by virtue of the impugned order. It is sought to be contended by Mr. Bhate that

the charge-sheet was served in the year 1978 and the reply of the petitioner was filed in the year 1984 and that had caused delay. However, one fails to understand when the incident had taken place in the year 1965, how at such a belated stage the charge-sheet came to be issued against the petitioner and even thereafter why for such a long period no decision could be taken in the matter even after reply of the petitioner was filed in 1984. It is quite possible that if the proceedings had been initiated against him in time and it had been concluded within reasonable time, the inquiry would not have remained pending when Review Committee met and it might not have been taken into consideration for assessing the petitioner's performance of service in light of the criteria laid down in the said resolution. The criteria is whether any disciplinary proceedings are pending or contemplated against the employee. Thus, timely action on the part of respondent could have resulted into completion of the inquiry much before Review Committee met. Secondly even during the pendency of the said proceedings the petitioner was promoted to Class-I post and subsequently even permitted to cross the efficiency bar. What would be the effect of this, would be considered little later in light of the judgments that have been cited before me.

3.2. So far second departmental inquiry is concerned, the order dated 17th November, 1993 shows that the petitioner has been exonerated of both the charges levelled against him. Thus, the factors that have been taken into consideration by the Review Committee regarding pendency of the departmental proceedings have ultimately turned out to be of no significance at all.

3.3. The next question that arises for consideration is when the impugned order has been passed by the respondents on the basis of the opinion of the Review Committee regarding doubtful integrity of the petitioner and the said order is challenged before the competent court of law, whether the facts and circumstances that had been taken into consideration by the Review Committee were required to be brought on record to enable the Court to take appropriate decision. As stated above, neither in the impugned order nor in the appeal nor even in the affidavit-in-reply filed by the respondent the basis for forming such subjective satisfaction have been disclosed. The respondent has clearly stated that the order was passed on the ground of doubtful integrity and nothing more than that has been stated in the affidavit-in-reply. Ofcourse, it has also been stated that Criminal Case has been filed under the

provisions of the Prevention of Corruption Act by the Anti Corruption Bureau, Surat having C.R. No. 14 of 1998. This fact is mentioned with a view to show that complaints which had been received when he was working as Special Land Acquisition Officer with Gujarat Housing Board had been taken into consideration by the Review Committee. It is a matter of surprise that the Anti Corruption Bureau took almost 10 to 12 years to investigate into this case. As stated above, the petitioner retired with effect from 15th June, 1988; meaning thereby that all these incidents must have taken place prior to the said date and the F.I.R. appears to have been registered ten years after the retirement in the year 1998 by the Anti Corruption Bureau as the C.R. No. is of 1998. The said F.I.R. relates to which matter it is not known because no further details have been provided by the respondent to this Court, despite the fact that ample time was granted by me to the Ld. AGP to furnish details regarding this case. Neither the A.G.P. nor the officers of the respondents who attended the Court proceedings were able to throw any light despite the fact that hearing was adjourned several time for this purpose. According to Miss Kerravala her client has never been summoned to any Court till this date. Thus, even this Court is kept in the dark on what basis the subjective satisfaction was arrived at by the competent authority on the ground of doubtful integrity. It may be worthwhile to note here that a decision of the Apex Court has been relied on by Mr. Bhate, which is rendered in the case of State of Orissa v. Ram Chandra Das and reported in AIR 1996 S.C. p. 2436. The facts of that case show that when the proceedings were pending before the Tribunal the entire record of the Review Committee was placed before the Tribunal. No such effort has been made by the respondent in this case. Be that as it may. Now the question which is required to be considered is when the impugned order is passed on the grounds mentioned above, what could be the nature of such order and especially when during the pendency of the departmental proceedings the petitioner is not only promoted to a post in Class-I but even permitted to cross efficiency bar on that post.

3.4. Miss Kerravala has placed heavy reliance on the decision of the Division Bench of this Court [Coram : R.C. Mankad, Actg. C.J. & C.K. Thakkar, J. as they then were] rendered in the case of Purshottambhai A. Patel v/s. The State of Gujarat in Special Civil Application No. 28 of 1990 dated 12th October, 1990. IN that case the petitioner had challenged the order of compulsory retirement which was passed under rule 161 of

the B.C.S.R. During the course of the judgment it has been observed by the Division Bench that it is well settled principle of law that the order of compulsory retirement does not amount to dismissal even from service within meaning of Article 311 of the Constitution of India. However, it is open for the aggrieved person to challenge such decision that the requisite opinion had not been formed bonafide or that the decision was based on collateral ground or it was arbitrary. The Court has observed as under:-

> ".... It is, however, always open to an aggrieved party, to contend that the requisite opinion, has not been formed bonafide or that the decision is based on collateral ground or arbitrary. Under the guise of "public interest" if unlimited discretion is regarded acceptable for making order of compulsory retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal, the exercise of power must be bonafide and should promote public interest. ..."

In the said decision Division Bench has placed reliance on the case of Ram Ekbal Sharma v/s. State of Bihar reported in AIR 1990 S.C. 1369 and has observed that even the Apex Court in view of the fact that the case of the State was that the concerned employee had committed financial irregularity leading to financial loss to the State, had held that the order of compulsory retirement was penal in nature and it was passed by way of punishment. Ultimately after discussing several judgments of the Apex Court, the Division Bench has come to the following conclusion :-

> "It is true that since an action of compulsory retirement is not penal in nature, the principles of natural justice do apply in such cases. As held by the Supreme Court in Colonel J.N. Sin's case (supra), the provisions relating to compulsory retirement do not in terms require that an opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. In fact, it is "absolute right of the Government" to retire a Government servant if it is of the opinion that it is in the public interest to do so. If the authority bonafide forms that opinion, cannot be questioned before the Court. The Court is not an appellate forum to decide the propriety of such opinion formed by the Government.
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> But at the same time, it should not be

> forgotten that such opinion must be bonafide, genuine and reasonable and not arbitrary or unreasonable though the Courts are not appellate authorities they can certainly go into the foundation of the requisite opinion formed by the Government notwithstanding the form of the order."

Thereafter the Division Bench in light of the facts and circumstances of the case before it, held that the said case was directly covered by the judgment of the Apex Court and the impugned order was required to be quashed.

3.5. Miss Kerravala has also placed reliance on the decision of the same Division Bench rendered in the Letters Patent Appeal No. 9 of 1988 dated 7th November, 1990. Judgment of the Division Bench shows that in that case complaints were received against the concerned employee regarding acceptance of bribe, favouritism, and committing acts of irregularities and illegalities while conducting the acquisition proceedings of lands for Guhai irrigation scheme and allotment of land for agricultural as well as residential purposes to the affected persons. In view of the aforesaid, Review Committee in that case formed the opinion to the effect that the integrity of the employee was doubtful and the Review Committee recommended to the Government to compulsorily retire the said employee from service. The Government thereafter, passed order of compulsory retirement from service on 27th March, 1986, in view of the recommendation of the Review Committee. That order ultimately became the subject matter of the Letters Patent Appeal before the same Division Bench (i.e. R.C. Mankad Acting Chief Justice & C.K. Thakkar, J.). While disposing of the appeal, the Division Bench stated that the facts in the Letters Patent Appeal were similar to the facts of the Special Civil Application No. 28 of 1990, which was disposed of by it on October 12, 1990 and it was stated that the said decision would govern the instant case also. The Division Bench further held that the reasons which weighed with it in allowing the Special Civil Application No. 28 of 1990 would apply with equal force to the facts of the instant case i.e. Letters Patent Appeal. It, therefore, did not think it fit to restate the reasons and allowed the appeal in light of the decision rendered in Special Civil Application No. 28 of 1990.

3.6. If the facts of the Letters Patent Appeal are closely perused, there is similarity between those facts and the facts of the case before me. In the

present case also the factors that have been taken into consideration by the Review Committee are not only the pendency of the departmental proceedings against the petitioner but also the complaints that had been received by it and placed before it regarding the alleged corrupt practice adopted by the petitioner while working as Special Land Acquisition Officer on deputation with Gujarat Housing Board. If that be so, the present case will have to be decided in light of the decision of the Division Bench referred to above, as the said decision would apply with equal force to the facts of the present case.

3.7. Apart from this, Miss Kerravala has also placed reliance on the decision of the Apex Court rendered in the case of State of Gujarat v/s. Umedbhai M. Patel reported in (2001) 3 S.C.C. p. 314. In para. 11 of the said decision the Apex Court has enumerated the definite principles relating to compulsory retirement, which are as follows :-

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus :

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
(v) Even uncommunicated entries in the confidential record can also be taken into consideration.
(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.
(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
(viii) Compulsory retirement shall not be imposed as a punitive measure."

The principles at serial nos. (vi), (vii) and (viii) are

very much relevant for the purpose of deciding this case. In the instant case, as can be seen from the record of the petition, the petitioner was not only promoted to Class-I post during the pendency of the proceedings, but he was later on permitted to cross efficiency bar on that post, coupled with the fact that the inquiry in respect of the first incident was not concluded in the year 1990. Further that even upon conclusion of the same, a final punishment of reduction of Rs.200/= from the basic pension of the petitioner was passed. So far the second inquiry is concerned, as stated above, he was completely exonerated. Thus, the factors which had been kept in view by the Review Committee have ultimately turned out to be of no significance so far the purpose of forming of subjective satisfaction is concerned. It has been rightly contended by Miss Kerravala that the decision that was taken was premature. The competent authority ought to have waited for the outcome of the inquiry and should not have proceeded to pass the impugned order even before it was completed. In the circumstances, it can well be said that the decision of the competent authority based on the recommendations of the Review Committee was not based on the appropriate procedure.

3.8. So far the second aspect of the impugned order is concerned, it is also based on the ground of doubtful integrity. As already stated above, what are the facts which have led the Review Committee to come to such conclusion are totally absent on record. It is not known for what purpose the relevant material has been withheld even from the Court. It is pertinent to note here that in two of the decisions which have been cited by the learned advocates for the parties of the Apex Court, facts of those cases reveal that the entire material that was considered by the Review Committee was produced before it. In the instant case, despite adequate opportunity the respondent has failed to place on record even the copy of the complaint alleged to have been filed against the petitioner at Surat under the provisions of Prevention of Corruption Act. Both the orders, namely that of compulsory retirement and one that has been passed in the appeal, are non-speaking orders. They do not reveal anything except the direction regarding compulsory retirement and the reduction of the pay of the petitioner. Even the affidavit-in-reply is totally silent on this aspect. When the matter was open for judicial review and when it was actually under the scrutiny of the Court, it was desirable that the material should have been made available for perusal of the Court or such details ought to have been placed on record by way of affidavit. Nothing has been done. In that view

of the matter, it is difficult to accept that the impugned order has been passed on the ground of doubtful integrity of the petitioner. An attempt has been made by the respondent by making an averment in the affidavit that even during pendency of the appeal, the petitioner has tried to influence the higher authorities to bring pressure on them. In support of this averment, Mr. Bhate, Ld. AGP had shown to me a letter written on behalf of the petitioner addressed to the then Chief Minister. With a view to ascertain correct facts, I had permitted him to so. I have gone through the contents of the said letter and I could see that there was nothing in the said letter which could substantiate the say of the respondent in the affidavit. The letter seems to have been drafted under legal advice because in the said letter whatever averments that have been made in the representation and appeal have been reproduced. It does not in any way indicate that the petitioner exercised his influence on the concerned authority. Thus, on all the counts there is absolutely no material on record to uphold the say of the respondent that the impugned order was also passed on the ground of doubtful integrity.

4. Apart from this, in light of the aforesaid decisions which have been delivered by the Division Bench of this Court, it is abundantly clear that when such orders are passed on these grounds, they are held to be passed on extraneous considerations and are liable to be quashed and set aside. In the decision rendered by the Apex Court in the case of State of Gujarat v/s. S.C. Shah reported in 1999 (3) G.L.R. p. 2060 it has been held that when there was no material to draw inference that the officer was a man of doubtful integrity, the order of compulsory retirement was punitive in nature having been passed for collateral purpose of his immediate removal rather than in public interest. The facts of that case will show that the complete record of the Review Committee was placed before the Court which was also taken into consideration. As against that, the decision which has been relied upon by Mr. Bhate, Ld. AGP is of the Apex Court rendered in the case of State of Orissa v/s. Ram Chandra Das reported in AIR 1996 S.C. p.2436. Mr. Bhate has placed reliance on the following passage :-

"7. It is contended for the respondent that adverse entries for the two years referred to earlier and pending departmental proceedings would not be sufficient to compulsorily retire the Government servant on the premise that after promotion they would become irrelevant and minor penalty was imposed. It is true that the

Government servant was allowed to cross the efficiency bar to enable him to avail the benefits to draw higher scale of pay after crossing the efficiency bar. The adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character role. The record of enquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances to act of misconduct, nevertheless remains part of the record for overall consideration to retire a Government servant compulsorily. The object always is public interest. The material question is : whether the entire record of service was considered or not? It is not for the Court/Tribunal to see whether the decision of the Government to compulsorily retire the Government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. As stated earlier, it is settled law that the Government is required to consider the entire record of service. Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the Government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that self-same material after promotion may not be taken into consideration only to deny him further promotion, if any, but that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the Government servant in service after he attained the required length of service or qualified period of service for pension. It is also made clear that in this case adverse entries were made only after promotion and not earlier to promotion. Compulsory retirement is not a punishment. He is entitled to all the pensionary benefits.

8. Under these circumstances, we are of the considered view that the Tribunal was wholly unjustified in interfering with the decision to retire the respondent compulsorily from service on the aforesaid grounds."

It may be noted here that in that case the material that

was placed before the Review Committee was even placed before the Orissa Administrative Tribunal and the complete record was perused by the Tribunal and the Tribunal had thereafter found that the impugned order passed against the said employee was not just and proper. The Apex Court while upsetting the decision of the Tribunal, has observed that in view of the complete record which was placed before the Review Committee and which clearly showed that the continuance of that officer in Government service was against the public interest, the order of compulsory retirement was passed and had observed that it did not matter that despite some adverse entry, promotion was given to him.

4.1. As already stated above, no material has been placed before this Court for its scrutiny. Not only that but even the copy of the first information report alleged to have been filed against the petitioner is not produced. The affidavit-in-reply shows that the confidential reports have been perused by the Review Committee and it has found the same to be satisfactory. So far the aspect of doubtful integrity is concerned, it clearly creates a doubt in the mind of the Court what sort of complaints were placed before the Review Committee that even after 10 years of the retirement of the petitioner, no formal complaint could be lodged with the police in respect thereof. Though the Anti Corruption Bureau is said to have investigated into the complaint, it would commence the investigation of the offence only after it is registered with it. No details regarding the case that may have been filed against the petitioner on the basis of C.R. No. 14 of 1998 is placed before the Court. Further so far the second aspect with regard to pendency of departmental inquiries against the petitioner is concerned, as discussed above, one inquiry has been concluded almost 26 years after the incident when the petitioner was no more in the service and minor punishment has been imposed. In the second inquiry the petitioner has been exonerated. It is true that it is the discretion of the Government to take appropriate decision with regard to compulsory retirement of its employee on the basis of his entire service record, but when the recommendation of the Review Committee is based on such doubtful material, such decision would be open to judicial scrutiny as observed by the Division Bench of this Court and when no record is placed before it despite several opportunities having been given to the Government, this Court can interfere with the decision of the Government with regard to compulsory retirement of the petitioner. Thus, considering the facts of this case, the aforesaid

decision of the Apex Court will not be of any use to the respondent.

4.2. Thus, considering overall scenario of the facts and circumstances and also relevant orders of this Court, it appears that the present order is required to be quashed and set aside and it is hereby ordered to be quashed and set aside and as a consequence thereof, the order in appeal dated 10th March, 1989 is also quashed and set aside.

5. As a result of the aforesaid orders of this Court, the following directions will have to be issued :-

I. It is now declared that the petitioner continues in the service. The petitioner shall be entitled to all monetary and other benefits as if the impugned order of compulsorily retiring him from service had never been passed and had never come into operation. Since the petitioner has already attained the age of superannuation, the question of reinstating him in service, at this stage, does not arise. Petitioner shall, however, be paid arrears of salary and all other benefits payable to him on the basis that he was in service till he attained the age of superannuation. This exercise will have to be carried out by the respondent within eight weeks from the date on which certified copy of the judgment is ready for delivery.

II. The respondent is also further directed to refix pension of the petition and give pay pension and other pensionary benefits to him on the basis that he had retired from service on attaining age of superannuation at 58 years, within 12 weeks from aforesaid date. It is clarified that for the purpose of arrears of salary and fixation of pension and grant of pensionary benefits, the petitioner shall be treated on duty from the date he was made to compulsorily retire to the date he attained the age of superannuation.

Petition is accordingly allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.